

CENTRAL FAX CENTER

DEC 06 2004

PTO/SB/00 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

<b>Request for Continued Examination (RCE) Transmittal</b>  Address to: Mail Stop RCE Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	09/728,153
	Filing Date	December 2, 2000
	First Named Inventor	Hiroshi Nomura
	Art Unit	1743
	Examiner Name	Lateya I. Cross
	Attorney Docket Number	01876.0005-US-01

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

b. ☒ Enclosed

i. ☐ Amendment/Reply

ii. ☐ Affidavit(s)/ Declaration(s)

iii. ☐ Information Disclosure Statement (IDS)

iv. ☒ Other Terminal Disclaimer & Extension Petition

2. **Miscellaneous**

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(f) required)

b. ☐ Other \_\_\_\_\_

3. **Fees**

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed. The Director is hereby authorized to charge the following fees, or credit any overpayments, to

a. ☒ Deposit Account No. 50-1038 I have enclosed a duplicate copy of this sheet.

i. ☒ RCE fee required under 37 CFR 1.17(e)

ii. ☒ Extension of time fee (37 CFR 1.136 and 1.17)

iii. ☒ Other Terminal Disclaimer fee

b. ☐ Check in the amount of \$ \_\_\_\_\_ enclosed

c. ☐ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Signature	<i>David H. Carroll</i>	Date	December 6, 2004
Name (Print/Type)	David H. Carroll	Registration No.	29,903

CERTIFICATE OF MAILING OR TRANSMISSION	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.	
Signature	<i>Michelle Read</i>
Name (Print/Type)	Michelle Read
Date	December 8, 2004

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO in process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PAGE 1/3 RCVD AT 12/6/2004 6:29:09 PM [Eastern Standard Time] \* SVR:USPTO-EFXRF-1/2 \* DNS:3729306 \* CSID:952 912 0574 \* DURATION (mm:ss):01:26

adjustment date: 03/22/2005 SDIRETA1  
 12/23/2004 AJONES 00000001 501038 09728153  
 01 FC:1801 790.00 CR  
 02 FC:2252 435.00 CR

BEST AVAILABLE COPY

Feb 11 05 04:14p

Altera Law

9529120574

P.2

APPLICATION SERIAL NO. 09/728,153

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hiroshi Nomura, et al. Examiner: Latoya I. Cross  
Serial No.: 09/728153 Group Art Unit: 1743  
Filed: December 2, 2000 Docket No.: 01875.0005-US-01  
Title: SURFACE-MODIFIED WICK FOR DIAGNOSTIC TEST STRIP

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FACSIMILE TRANSMITTED TO THE  
U.S. PATENT AND TRADEMARK OFFICE, FAX NO. (703) 308-5077 ON FEBRUARY 11, 2005.

MICHELE A. READ  
NAME OF PERSON SIGNING THIS CERTIFICATE

*Michele A. Read*  
SIGNATURE

## REFUND REQUEST UNDER 37 C.F.R. §1.26

Mail Stop 16  
Director of the US Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request a refund under 37 C.F.R. §1.26. Due to Patent Office delay, applicants had no choice but to authorize a fee of \$1,225.00 be charged to Deposit Account Number 50-1038 on December 6, 2004 for filing a Request for Continued Examination (RCE) and petition for further extension of time in the above-referenced patent application. In as much as applicants' actions were necessitated by Office delay and were in no part applicants' fault, a refund is requested. A copy of the December 2004 Deposit Account Statement is enclosed as Appendix A. The details follow.

Applicants received a final Office action mailed from the USPTO on June 4, 2004. A response and petition for extension of time were submitted via facsimile on October 1, 2004. Included with the reply was a Declaration Under 37 C.F.R. 1.132 signed by Hiroshi Nomura to overcome the § 102(e) and § 103 rejections. Applicants' representative believed the affidavit would sufficiently overcome all of the rejections and place the application in condition for allowance.

APPLICATION SERIAL NO. 09/728,153

PATENT

Although there were several telephone conversations with the examiner and her supervisor regarding the status of this matter, no further written communication was received from the Patent Office prior to the deadline to respond to the Office Action on December 6, 2004. During the course of the telephone conversations, applicants' representative did request the examiner to provide a written evaluation of the ability of the affidavit submitted in response to the June 4 Office Action. Applicants did receive verbal confirmation from the Examiner that the affidavit would likely be sufficient to overcome the 102(e) and 103 rejections, but never in writing. The only written indication applicants have received in this regard is a Notice of Allowance dated January 27, 2005, which is after the events in question.

On December 6, 2004 (December 4<sup>th</sup> and 5<sup>th</sup> falling on a weekend), after failing to receive a written summary of the status of the rejections, applicants filed an RCE and request for further extension of time to ensure that the application would not become abandoned. Ultimately, applicants did receive a facsimile from the supervising Examiner in the case after the extended deadline of December 6, 2004 to respond to the Office Action. This document, faxed to applicants' representative on December 7, 2004, only discusses the requirement of filing a terminal disclaimer.

Applicants believe that if the Patent Office had timely replied in writing to the Office Action response filed on October 1, 2004, an RCE and further extension fee would not have been necessary. However, under the circumstances, applicants were required to file the RCE to protect its continuing rights in this case.

Furthermore, since applicants claim small entity status, only \$395.00 should have been assessed for the RCE filing fee.

Attached herewith (Appendix B) as evidence in support of the above includes the following:

- the Office Action of June 4, 2004;
- applicants' response to the June 4 Office Action;
- the Notice of Allowability for the case including the facsimile from the USPTO regarding the case disposition sent December 7, 2004; and
- a copy of the relevant deposit account information for the RCE filing fee and petition for extension of time to file the RCE.

BEST AVAILABLE COPY

Feb. 11 05 04:15p

Altera Law

9529120574

p. 4

APPLICATION SERIAL NO. 09/728,153

PATENT

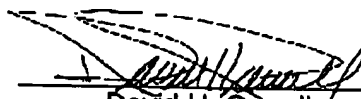
Applicants respectfully request that the amount of \$1,225.00 be refunded (\$790 for RCE filing fee and \$435 for a petition for further extension of time under 37 C.F.R. § 1.136(a)). The refund may be made directly to the Deposit Account Number 50-1038 for Altera Law Group, LLC.

Respectfully submitted,

Altera Law Group, LLC  
Customer No. 22865

Date: February 11, 2005

By:

  
David H. Carroll  
Reg. No. 29,903  
DHC/mar

# BEST AVAILABLE COPY

Feb 11 05 04:15p

Altera Law

9529120574

p. 5

APPLICATION SERIAL NO. 09/728,153

PATENT

## APPENDIX A

Feb 11 05 04:15p

Altera Law

9529120574

p.6

Deposit Account Statement

Page 1 of 2



**United States  
Patent and  
Trademark Office**



**Deposit Account Statement**

Requested Statement Month: December 2004  
 Deposit Account Number: 501038  
 Name: ALTERA LAW GROUP  
 Attention: JUDY BOURASSA  
 Address: 6500 CITY WEST PARKWAY  
 City: MINNEAPOLIS  
 State: MN  
 Zip: 55344

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
12/02	3	10671006	19141.0023U2	2253	\$490.00	\$3,719.14
12/02	4	10671006	19141.0023U2	2201	\$176.00	\$3,543.14
12/02	5	10671006	19141.0023U2	2202	\$9.00	\$3,534.14
12/02	6	PCT/US04/36382		9204	-\$51.00	\$3,585.14
12/03	1	29185074		2254	\$740.00	\$2,845.14
12/07	161	29212215		9204	-\$65.00	\$2,910.14
12/09	476	6203850	018750005US01	8021	\$40.00	\$2,870.14
12/09	493	09728153	01875.0005	8021	\$40.00	\$2,830.14
12/09	496	09728153	018750005US01	8021	\$40.00	\$2,790.14
12/09	498	09728153	01875.0005	8021	\$40.00	\$2,750.14
12/09	500	09728153		8021	\$40.00	\$2,710.14
12/10	421	09889010		8021	\$40.00	\$2,670.14
12/10	529	09889010	980.1094USWO	2501	\$700.00	\$1,970.14
12/13	3	PCT/US04/38128	03220.0002-WO-U1	8007	-\$100.00	\$2,070.14
12/13	4	PCT/US04/38128	03220.0002-WO-U1	8007	\$80.00	\$1,990.14
12/14	205	10280939	11527.00	1501	\$30.00	\$1,960.14
12/15	1	PCT/US04/36460	1875.3-WO-U1	8007	-\$100.00	\$2,060.14
12/15	2	PCT/US04/36460	1875.3-WO-U1	8007	\$60.00	\$2,000.14
12/16	259	11011646	00601.0437-US-WO	1202	\$210.00	\$1,790.14
12/16	264	11011647	00601.0438-US-WO	1202	\$210.00	\$1,580.14
12/20	9	11013288	00601.0440-US-WO	1202	\$210.00	\$1,370.14
12/20	40	11013242	00601.0439-US-WO	1202	\$210.00	\$1,160.14
12/20	258	09889070	01485.0012-US-WO	8021	\$40.00	\$1,120.14
12/21	9	E-REPLENISHMENT		9203	-\$3,000.00	\$4,120.14
12/21	400	6048727		8021	\$40.00	\$4,080.14
12/21	401	6127141		8021	\$40.00	\$4,040.14
12/21	402	6214574		8021	\$40.00	\$4,000.14
12/21	403	4885087		8021	\$40.00	\$3,960.14

# BEST AVAILABLE COPY

Feb 11 05 04:15p Ritera Law

9529120574

p. 7

Deposit Account Statement

Page 2 of 2

12/21 404	6022742		8021	\$40.00	\$3,920.14
12/22 9	10130686	19141.0051U3	1201	\$1,144.00	\$2,776.14
12/22 10	10130686	19141.0051U3	1202	\$108.00	\$2,668.14
12/23 1	09728153		1801	\$790.00	\$1,878.14
12/23 2	09728153	1875.0065U301	2252	\$435.00	\$1,443.14
12/23 3	09728153		1814	\$110.00	\$1,333.14
12/28 26	29219821	00601.0435-US-01	2112	\$50.00	\$1,283.14
12/28 27	29219821	00601.0435-US-01	2312	\$65.00	\$1,218.14
12/28 29	29219820	00601.0441-US-01	2112	\$50.00	\$1,168.14
12/28 30	29219820	00601.0441-US-01	2312	\$65.00	\$1,103.14

START	SUM OF	SUM OF	END
BALANCE	CHARGES	REPLENISH	BALANCE
\$4,209.14	\$6,422.00	\$3,316.00	\$1,103.14

Need Help? | [Return to USPTO Home Page](#) | [Return to Finance Online Shopping](#)

BEST AVAILABLE COPY

Feb '11 05 04:15p

Altera Law

9529120574

p. 8

APPLICATION SERIAL NO. 09/728,153

PATENT

APPENDIX B



Feb '11 05 04:15p

Altera Law

9529120574

p. 9



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22312-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,153	12/02/2000	Hiroshi Nomura	01875.0005-11S-01	3652

22865 7390 06/04/2004

ALTERA LAW GROUP, LLC  
 6500 CITY WEST PARKWAY  
 SUITE 100  
 MINNEAPOLIS, MN 55344-7704

EXAMINER	
CROSS, LATOYA I	

ART UNIT	PAPER NUMBER
1743	

DATE MAILED: 06/04/2004

2 month FR 04 Aug 04 r not  
 6 month FR 04 Dec 04 r not

Please find below and/or attached an Office communication concerning this application or proceeding.

Feb '11 05 04:16p

Altera Law

9529120574

p. 10

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/728,153	NOMURA ET AL	
	Examiner	Art Unit	
	LaToya I. Cross	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

Feb 11 05 04:14p

Altera Law

9529120574

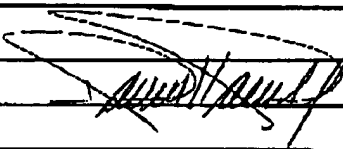
p. 1

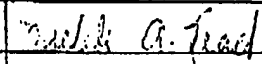
PTO/SB/21 (09-04)  
Approved for use through 07/31/2006. OMB 0851 1X131  
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b>	Application Number	09/728,153
	Filing Date	December 2, 2000
	First Named Inventor	Hirosaki Nomura
	Art Unit	1743
	Examiner Name	Latoys I. Cross
	Attorney Docket Number	01875.0012-1/18 01
Total Number of Pages in This Submission		32

(Use for all correspondence after initial filing)

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Refund Request Under 37 C.F.R. 1.26 (31 pages)
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Altera Law Group, LLC	
Signature		
Printed name	David H. Carrell	
Date	February 11, 2005	Reg. No. 29,903

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.		
Signature		
Typed or printed name	Michele A. Read	Date February 11, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.